

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 26, 2006

STATE OF TENNESSEE v. RODNEY CLAY SPARKS

**Direct Appeal from the Criminal Court for Hamilton County
No. 245100 Rebecca Stern, Judge**

No. E2005-02832-CCA-R3-CD - Filed November 8, 2006

A jury convicted the Defendant, Rodney Clay Sparks, of second degree murder, and the trial judge imposed a twenty year sentence. On appeal, the Defendant contends the trial court erred when it: (1) failed to give a proper self defense instruction, (2) did not allow evidence of the victim's prior burglary, and (3) did not mitigate the Defendant's sentence. We affirm the judgment of the Criminal Court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID G. HAYES and J.C. McLIN, JJ., joined.

Ardena J. Garth and Donna Robinson Miller, Chattanooga, Tennessee, for the Appellant, Rodney Clay Sparks.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; William H. Cox, III, District Attorney General; Bates Bryan and Boyd Patterson, Assistant District Attorneys General, for the Appellee, State of Tennessee.

OPINION

I. Facts

A. Facts at Trial

This case arises from the Defendant's conviction for the second degree murder of the victim, Michael Hyatte. At the Defendant's trial, the following evidence was presented: Myra Hyatte, the victim's niece, testified she had been with the victim during the day before his death.¹ They had

¹We know from later testimony that the victim was killed at approximately 4:00 a.m. on April 14, 2003.

been at a family party, and the victim had been drinking all day. Hyatte stated that the victim and the Defendant's sister, Reba Sparks, who were dating, had recently moved out of the Defendant's house because the electricity and water had been turned off. Because of the financial situation, the victim was staying with her, and Sparks was staying with Sparks's mother. Hyatte also testified that the victim and Sparks planned to return to the house to live with the Defendant when the water and electricity were turned back on.

Officer Lancaster testified that he was dispatched to the Defendant's house at 4:00 a.m. When he arrived at the Defendant's home, he knocked on the door, and the Defendant answered. When asked what the problem was, the Defendant responded, "He's in there. I stabbed him. I think I killed him."

Officer Willoughby testified that he arrived on the scene at the same time as Lancaster. He stated that dispatch told him that a female called and said she had been on the phone with her boyfriend and heard an argument, then the phone went dead. Willoughby stated that when the Defendant answered the door he looked extremely surprised and scared. The officers asked the Defendant to put his hands up and the Defendant said, "He's in there. I think I killed him." The officers went into the house and saw a closed bedroom door and blood smudge marks on the door frame.

Officer Willoughby stated that they put the Defendant into custody and checked the bedroom, where they found the victim. The bedroom was covered in blood. The officers also found a smoldering phone, which looked like it had been knocked over and burnt by a candle. Finally, on the way to the patrol car, the Defendant stated, "He kept messing with me and the motherf***** got what he deserved."

Investigator Russell testified that the murder weapon was never found. Sergeant Johnson also testified that he searched for, but never found, the knife. Officer Trussel testified that, while the Defendant was in the hallway at the Police Station, he asked if the person in the house was dead. Detective Phillips responded he believed the victim was dead, and the Defendant hung his head and said, "I killed him. I guess I killed him."

Detective Phillips testified that he was present when the Defendant gave a statement. The Defendant had signed his rights waiver with his right hand because his left hand was hurting. The Defendant stated that the victim had been calling him "bitches and hoes," would not stop, and the Defendant killed him.

Dr. Kessler performed an autopsy on the victim and determined that the victim died from multiple stab wounds, two of which were lethal. The first lethal stab wound penetrated the victim's back, turned towards his clavicle and sliced the subclavian artery, causing rapid death. The second lethal stab wound penetrated the heart and would have caused immediate death.

Edna King testified that she knew the victim, the Defendant, and Sparks. The evening before

he was stabbed, Sparks was at King's house, and the victim came to King's house but left angry when King would not let him inside. Sparks did not want to speak to the victim.

Sparks testified that she had been the victim's girlfriend for about seven years. Sparks, the victim, and the Defendant lived at the same house until the electricity and water were turned off because the bills were not paid. The Defendant was the only one working at the time. Sparks further testified she was at King's house the day before the victim was stabbed, when the victim called Sparks, asking to speak to Sparks's daughter. Sparks replied that her daughter was outside speaking with her "real father," and the victim became enraged. He came over thirty minutes later, screaming and cursing, calling Sparks and King "candy bitches." The victim then left King's house. Then, Sparks's mother called Sparks to tell her that the victim and the Defendant were arguing, and Sparks should tell the victim to leave.

Later, while Sparks was asleep, King's boyfriend came over to King's house, and then he went to the Defendant's house to argue with the victim. King's boyfriend came back to King's house and told Sparks she should leave. Sparks went to her mother's house where she again talked to the victim on the phone. During that phone conversation, Sparks stated she heard glass break and the victim calling her name, crying out he was hurt. Sparks then told her sister to call the police.

June Sparks, Sparks's sister, Macarah King and Brittany King, Sparks's children, all testified that the victim was extremely angry when he came over to King's house after the children's "real daddy" had been there that day. June Sparks additionally testified she was personally very scared of the victim because she had seen him that way before.

Based upon this evidence, the jury convicted the Defendant of second degree murder.

B. Sentencing

The Defendant requested the trial judge mitigate his sentence on the seven following mitigating factors: (1) The Defendant acted under strong provocation; (2) The Defendant has a history of alcohol abuse which has had a significant impact on his life; (3) The Defendant has no prior felony convictions; (4) The Defendant has had no write-ups during his incarceration at the Hamilton County Jail; (5) The Defendant cooperated with the authorities by voluntarily admitting to stabbing the victim; (6) The Defendant has been shown to be compassionate, generous, and devoted towards his family; (7) The Defendant has substantial family and community support.

Dr. Pendergrass testified that the Defendant was an alcoholic, who had trouble holding onto a job because of alcohol use and poor judgment. Additionally, the Defendant showed poor frustration tolerance by history.

The following were contained in letters to the trial court concerning the Defendant's sentence:

He never bothered anyone; he read his newspapers and sat on the porch.
Bricara King, Niece

He is a good person and people love him.
Brenae King, Niece

He was nice. He helped me with homework, reading the newspaper and playing football.
Bryan King, Nephew

He took care of me when my own father wouldn't or couldn't. He is a valuable person in my life.
Brittney King, Niece

My uncle is a valuable piece in my life. Without him, a piece is missing. He was the one keeping me out of trouble and encouraging me to stay on the right track.
Brandon King, Nephew

My uncle [the Defendant] was good to me. [H]e help[ed] me to learn a lot of things.
Tammy Sparks, Niece

I describe my uncle Clay as the most open hearted person in the world.
Tanisha Sparks, Niece

I have known him to be a king and a caring person to everyone. He always had an ear to listen when you needed one, no matter what the subject; and always took time for those around him He is a very influential key to our family.
Jessica O'Rourke, Niece

Clay has always been quiet and nice He always take[s] time to listen or throw a few football passes or basketball with the kids and family.
Rachel Sparks, Mother

Rodney has always been a hard worker and would do anything to help if needed.
Thomas Sparks, Jr., Brother

Rodney Sparks is a good, funny, intelligent man. He is a very quiet man that stays to himself.
Kimberly Sparks, Sister

I know that he is a good man and very quiet.
Lovest Morris, Brother-in-law

It is my belief during my interaction with Rodney Sparks that he was and is a very genuine and compassionate person During our interactions, Rodney was observed as humble, quiet and sincere.

Jean Davis Frye, Friend

Clay was a very subdued and gentle natured person, very quiet and always wearing a smile.

Glenda S. Allison, Friend

At the sentencing hearing, on April 4, 2005, the trial court listened to a statement from the victim's family. The court then stated that the minimum presumption was twenty years for second degree murder, but here could be mitigating factors which might reduce the sentence to fifteen years. The court then stated it had heard the mitigating factors, but it determined none of them were sufficient to lower the sentence. There were no enhancing factors.

II. Analysis

On appeal, the Defendant has alleged three errors. First, the Defendant claims the trial court improperly charged the jury by not including a proper self-defense instruction. Second, the trial court improperly precluded the Defendant from introducing evidence regarding the victim's prior burglary conviction. Finally, the Defendant claims he was improperly sentenced.

A. Jury Instruction

On appeal, the Defendant challenges the trial court's failure to properly instruct the jury regarding self-defense. The Defendant claims the following jury instruction should have been provided:

Any person using force intended or likely to cause death or serious bodily injury within the person's own residence is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to self, family or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, and the person using the force knew or had reason to believe that an unlawful and forcible entry occurred.

Tenn. Code Ann. § 39-11-611(b) (2003). During the discussion on jury instructions, the following exchange occurred:

Court: All right. Mr. Sparks is in the courtroom with his attorney. We are waiting on the DA's and I've placed final jury instructions for you, that I believe are now complete. I have included self-defense although there has been minimal evidence on that, I know that is your theory basically or at least part of it, so I am going to include

it as a charge. Ms. Garth, are you going to be requesting any other special instructions that aren't already in here? You see I have included all the lesser included offenses under murder. One thing I was going to put in here that I don't see is the identity instruction, even though I don't think [that] is a real issue.

Ms. Garth: Okay.

Court: I know that her theory is self defense. I think there has been minimal proof but I am going to charge it as an instruction. I have put cause of death. I meant to have an identity instruction in there. I am going to get it put in there. Other than that, all the lesser includeds are in there. Admission against interest. I don't think there is anything lacking, but if you all think so, tell me. Is everybody okay with the instructions once I add identity? I know identity is not a big issue but out of an abundance of caution I am going to add it.

There were no further statements or discussion concerning the jury instructions.

Tennessee Rule of Appellate Procedure 3(e) states that this Court is not permitted to review an issue concerning a jury instruction unless that issue was raised in the Defendant's motion for a new trial. See State v. Martin, 940 S.W.2d 567, 569 (Tenn. 1997) (holding issues which should have been presented in a motion for a new trial, but were not, are waived on appeal). It is improper for this Court to find the trial court erred in matters not brought to its attention. In his motion for a new trial, the Defendant challenged his sentence, the sufficiency of the evidence, and the non-admission of the burglary conviction of the victim. Because the Defendant did not raise this issue in his motion for a new trial, this issue is waived.

B. Non-admission of the Burglary Conviction

The Defendant claims that the trial court erred by not allowing the defense to present evidence of the victim's burglary conviction. The Defendant claims this evidence was "relevant to show that the victim, who was the first aggressor in this case, had a history of breaking in houses where he was not legally permitted to be for the purpose of committing a felony or assault." The State contends the trial court ruled properly because there was no proof that the victim was the first aggressor, and there was no proffer of evidence that the victim had been convicted of burglary, or if he had been that the burglary was a crime of violence.

In the bench conference addressing the burglary conviction, the following exchange took place:

Ms. Garth: I get confused about this sometimes. I know I could possibly get this in through the clerk, but Mr. Hyatte had a felony conviction for burglary.

Mr. Bryan: I object. If she is doing first aggressor, that's not burglary.

The Court: He is not testifying so you can't really impeach him, he's dead. He can't

testify, he can't be impeached. It's also hearsay. No, it can't come in.

“Rulings on the admissibility of evidence are largely within the sound discretion of the trial court, and on appellate review, a trial court's ruling to admit or exclude evidence will not be disturbed unless it appears that such a ruling amounts to an abuse of that discretion.” State v. James, 81 S.W.3d 751, 760 (Tenn. 2002). “An appellate court should find an abuse of discretion when it appears that the trial court applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.” Id. (internal quotations omitted).

Under some circumstances, a Defendant is allowed to offer first aggressor evidence. First aggressor evidence is evidence which would address “the issue of the animus of the deceased, his conduct and his motives, and [is] offered to show which party began or provoked the fight.” State v. Jerry Dale Bennett, No. 03C01-9304-CR-00115, 1994 WL 53645, *3 (Tenn. Crim. App., at Knoxville, Feb. 24, 1994) (internal quotations omitted), *no Tenn. R. App. P. 11 application filed*. “Evidence offered to corroborate a claim that the victim was the first aggressor is admissible once the issue of self-defense has been properly raised.” Id. at *4.

The trial court noted in its jury instruction discussion there was “minimal evidence” on the issue of self-defense. This Court cannot find any evidence that the victim in this case was the first aggressor. Quite to the contrary, the Defendant's own witness, Sparks, testified that she was on the phone with the victim when she heard the sound of breaking glass. She stated:

That's when [the victim] said that [the Defendant] had broke some glass or something. Well, he went to where [the victim] was at - - wherever [the Defendant] was at, I don't know where they was at, I don't know. When he come back, I hear him calling my name and he told me that he was hurt.

The only evidence that would tend to indicate the victim was the first aggressor was testimony that the victim was angry throughout the late afternoon and evening. Thus, it was well within the trial court's discretion to determine that the issue of who was the first aggressor had not been fairly raised.

Additionally, in order to be admissible as first aggressor evidence, the prior act must be violent. See State v. Ruane, 912 S.W.2d 766, 780 (Tenn. Crim. App. 1995); Bennett, 1994 WL 53645, *3 (discussing deceased's violent acts). There is no evidence to indicate that the burglary conviction was a violent act. Burglary in Tennessee is a broad crime, encompassing many actions, some of which are not violent. The Tennessee Pattern Jury Instructions define burglary as follows:

- (1) that the defendant entered a building other than a habitation (or any portion thereof) not open to the public (or remained concealed in a building or entered a building);
- (2) that the defendant entered with the intent to commit [a felony] (or committed or

- attempted to commit a felony);
- (3) that the defendant acted without the effective consent of the owner; and
- (4) that the defendant acted either intentionally, knowingly, or recklessly.

7 Tennessee Practice, Tennessee Pattern Jury Instructions § 14.01 (8th ed. 2004). There is no evidence that the victim's burglary conviction was for a burglary involving violence. The trial court did not abuse its discretion in excluding evidence of the victim's prior burglary. The Defendant is not entitled to relief on this issue.

C. Sentence

Finally, the Defendant challenges his sentence. The Defendant claims the trial court erred by failing to apply mitigating factors, thereby reducing his sentence. The State submits that the trial court properly found the presumptive sentence to be twenty years and that the mitigating factors did not weigh heavily enough to reduce the sentence.

When a defendant challenges the length, range or manner of service of a sentence, it is the duty of this Court to conduct a de novo review on the record with a presumption that "the determinations made by the court from which the appeal is taken are correct." Tenn. Code Ann. § 40-35-401(d) (2003). As the Sentencing Commission Comments to this section note, the burden is now on the appealing party to show that the sentencing is improper. Tenn. Code Ann. § 40-35-401, Sentencing Comm's Cmts. This means that if the trial court followed the statutory sentencing procedure, made findings of facts which are adequately supported in the record and gave due consideration and proper weight to the factors and principles that are relevant to sentencing under the 1989 Sentencing Act, Tenn. Code Ann. § 40-35-103 (2003), we may not disturb the sentence even if a different result was preferred. State v. Ross, 49 S.W.3d 833, 847 (Tenn. 2001). The presumption does not apply to the legal conclusions reached by the trial court in sentencing a defendant or to the determinations made by the trial court which are predicated upon uncontroverted facts. State v. Dean, 76 S.W.3d 352, 377 (Tenn. Crim. App. 2001); State v. Butler, 900 S.W.2d 305, 311 (Tenn. Crim. App. 1994); State v. Smith, 891 S.W.2d 922, 929 (Tenn. Crim. App. 1994).

In sentencing the Defendant, the trial court stated:

The law requires that I assume that the minimum presumptive sentence for a class A felony like this is twenty years. I have not heard anything that mitigates it down below that. What I am saying is, I'll take into consideration all the things you gave me and you argued but I don't find that they hold enough weight to mitigate lower than twenty years. So, I'll take into consideration all the documentation and the sentencing memorandum and the presentence investigation report, the facts at trial and the arguments and statements by counsel and his sentence will be set at twenty years, Range I.

The law is clear in Tennessee, "To facilitate appellate review, the trial court is required to

place on the record its reasons for arriving at the final sentencing decision, identify the mitigating . . . factors found, . . . and articulate how the mitigating . . . factors have been evaluated and balanced in determining the sentence.” State v. Samuels, 44 S.W.3d 489, 492 (Tenn. 2001) (quoting State v. Poole, 945 S.W.2d 93, 96 (Tenn. 1997)). Failure to do this would result in no presumption of correctness being given to the trial court’s determination. Id. The trial court considered mitigating factors, and we conclude it sufficiently articulated how the factors were evaluated. Thus, the trial court’s judgment retains the presumption of correctness.

The Defendant claims the following mitigating factors should have resulted in a reduced sentence: the defendant acted under a strong provocation when the victim broke into the Defendant’s house at 4:00 a.m.; the Defendant accepted responsibility and gave a voluntary statement; the Defendant appeared remorseful as shown by him hanging his head when he learned the victim was dead; the Defendant had no prior felony convictions and was never in trouble as a juvenile; the Defendant has a strong work ethic; the Defendant has always been compassionate, generous, and devoted to his family; the Defendant has substantial family and community support; the Defendant has great potential for rehabilitation. See Tenn. Code Ann. § 40-35-113(2), -113(13).

Second degree murder is a Class A felony, and the standard sentence for a Range I offender is fifteen to twenty-five years. Tenn. Code Ann. § 39-13-210(b) (2003); Tenn. Code Ann. § 40-35-112(a) (2003). For a Class A felony, the presumptive sentence is the mid-point in the range, twenty years. Tenn. Code Ann. § 40-35-210(c). Based on the evidence presented, the trial court determined that little weight should be given to the mitigating factors argued by the Defendant.

Because the trial court followed the statutory sentencing procedures set out in the 1989 Sentencing Act and gave due and proper consideration to the weight of the mitigating factors, we may not modify the sentence. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

Finally, the Defendant has asserted that the presumptive mid-range sentence is improper under Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 543 U.S. 220 (2005). The Tennessee Supreme Court has stated that the Tennessee sentencing procedures do not violate the Sixth Amendment right to a jury trial. State v. Gomez, 163 S.W.3d 632, 651 n.16 (Tenn. 2005). We agree with the trial court: this issue has no merit. Thus, we affirm the judgment of the trial court.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE